

A RESOLUTION

03-R-2165

BY THE PUBLIC SAFETY COMMITTEE

A RESOLUTION AUTHORIZING THE FULL AND COMPLETE SETTLEMENT OF ALL CLAIMS OF AMERICAN FOOD MANAGEMENT, INCORPORATED, IN THE CASE OF AMERICAN FOOD MANAGEMENT INC. VS. CITY OF ATLANTA ET. AL, CIVIL ACTION NUMBER: 2002-CV-62403, FILED IN THE FULTON COUNTY SUPERIOR COURT; TO AWARD CATERING AND CONCESSIONS CONTRACT TO AMERICAN FOOD MANAGEMENT, INC. FOR A PERIOD OF THREE YEARS WITH TWO ONE YEAR EXTENSION OPTIONS; AND FOR OTHER PURPOSES.

WHEREAS, on December 4, 2002 , the Plaintiff, American Food Management, Inc. ("AFM") filed a Petition for Interlocutory and Permanent Injunction, Petition for Mandamus, and Complaint for Attorneys Fees and Expenses of Litigation in the Fulton County Superior Court, case number 2002-cv-62403 (the "Suit"); and

WHEREAS, the Suit was filed against the City of Atlanta (the "City"), Karl McCray in his official capacity as Acting Commissioner of the Department of Parks and Recreation, Felicia Strong Whitaker, in her official capacity as the Director of the Bureau of Purchasing and Real Estate, John Doe No. 1 Evaluator from the Department of Parks and Recreation, and John Doe No. 2 Evaluator from the Office of Contract Compliance. The Suit alleged that the Defendants arbitrarily and capriciously scored proposals submitted in response to a Request for Proposals for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, FC-7436-02 (the "RFP"); and

WHEREAS, on January 6, 2003, Defendants filed a Memorandum in Opposition to Plaintiff's Motion for Interlocutory Injunction, Permanent Injunction, Petition for Mandamus and Attorneys Fees; and

WHEREAS, on June 10, 2003 the Court conducted a bench trial on the merits of the Suit at which the Court received testimony from witnesses for both parties, reviewed a number of documents, and heard oral arguments from counsel; and

WHEREAS, the Court ruled that the actions of the City and the other Defendants were arbitrary, capricious and unreasonable; and

WHEREAS, the Court further ruled that the City was permanently restrained and enjoined from awarding the contract for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center to any entity other than AFM, and that AFM was entitled to injunctive relief; and

WHEREAS, after the June 10, 2003 hearing, but prior to the Court's issuing a Final Order including Finding of Facts and Conclusions of Law, the parties entered into settlement negotiations; and

WHEREAS, AFM has agreed to dismiss all of the claims set forth in the Suit, including but not limited to its claim for over \$100,000 of attorneys' fees, in exchange for being awarded the contract for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, pursuant to the terms set forth in the RFP and other terms detailed below; and

WHEREAS, by this settlement, the City would admit no liability or wrongdoing; and

WHEREAS, the Department of Parks, Recreation and Cultural Affairs supports this settlement; and

WHEREAS, the Department of Law has advised that it is in the City's best interest to enter this settlement, and therefore recommends the same.

NOW THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1: The Mayor be and is hereby authorized to enter into an appropriate contractual agreement, on behalf of the City, with American Food Management, Inc., for FC-7436-02, Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, (the "Contract"), where said Contract shall include the provisions contained in Section 2 below. The Director of the Department of Procurement be and is hereby directed to prepare the Contract for execution by the Mayor, to be approved as to form by the City Attorney.

Section 2: The City Attorney be and is hereby authorized to enter an agreement, on behalf of the City and all other Defendants in the Suit, to settle all claims set forth in the Suit, pursuant to the following terms:

- A. The Contract shall be awarded to AFM.
- B. The City and AFM shall be bound by the terms of the RFP, except where the terms listed below conflict with the RFP, in which case the City and AFM shall be bound by the terms listed below.
- C. Consistent with the terms of the RFP, the Contract shall last for three years with two one-year options for renewal by mutual agreement of the parties.
- D. The contract will become effective on January 1, 2004.
- E. The Contract will provide AFM with the exclusive right to sell merchandise at the Boisfeuillet Jones Atlanta Civic Center.
- F. The Contract will provide that AFM is the sole concessionaire and will hold the liquor license for the Boisfeuillet Jones Atlanta Civic Center.
- G. AFM will adhere to the same financial terms and conditions during the term of the Contract as proposed by AFM in its proposal in response to the RFP, which include among other things, a minimum guaranteed annual rent of \$36,000.000, 15% of revenue generated from catering sales, 25% of all merchandise income per month up to \$15,000.00 and 35% of all merchandise income per month above \$15,000.000.
- H. The Contract will allow the City to offer prospective clients the ability to chose among four approved caterers in addition to the preferred caterer, AFM.
- I. The City shall not pay any damages to AFM.
- J. AFM will waive its claims for attorneys fees, punitive damages and expenses of litigation.
- K. AFM will dismiss the Suit in its entirety with prejudice.